

APPEAL NO. 170606  
FILED MAY 2, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 2, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to bronchiolitis, costochondritis, nodules in the lungs, shortness of breath, blurry vision, loss of vision, headaches, strain of muscles and tendons of the back wall of the thorax, corneal opacity or corneal scarring; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 10, 2015; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did not have disability from the compensable injury of (date of injury), from August 11, 2015, through December 4, 2015.

The claimant appealed the hearing officer's determination that the compensable injury does not extend to costochondritis, shortness of breath, blurry vision, loss of vision, headaches, corneal opacity or corneal scarring as being contrary to the preponderance of the evidence. The claimant further appealed the hearing officer's determinations regarding MMI, IR and disability as also being contrary to the preponderance of the evidence.

The respondent (carrier) responded, urging affirmance.

The hearing officer's determination that the compensable injury does not extend to bronchiolitis, nodules in the lungs or strain of muscles and tendons of the back wall of the thorax was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), that consisted of chemical bronchitis/pneumonitis, chemical keratitis and chemical dermatitis of the face.

The claimant testified that he was injured when an exchanger ruptured spraying his face with a chemical compound which included hydrogen peroxide and sulfuric acid.

**EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to costochondritis, shortness of breath, blurry vision, loss of vision, corneal opacity or corneal scarring is supported by sufficient evidence and is affirmed.

Additionally at issue was whether the compensable injury of (date of injury), includes headaches. In the Discussion section of her decision the hearing officer stated:

As to the corneal opacity and headaches, the mere fact that the conditions are identified in a medical report is insufficient to show that these conditions are related to the work injury within a reasonable medical probability.

By requiring that the claimant show that headaches are related to the work injury to a reasonable medical probability the hearing officer is, in fact, requiring expert evidence to establish a causal connection between such condition and the compensable injury.

The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. See also *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara*. However, where the subject is one where the fact finder has the ability from common knowledge to find a causal connection, expert evidence is not required to establish causation. See APD 150558, decided May 8, 2015, and APD 142523, decided January 26, 2015, where the Appeals Panel declined to hold expert medical evidence was required to prove headaches.

The hearing officer is requiring expert evidence of causation with regard to headaches to establish causation. Although the hearing officer could accept or reject in whole or in part the claimant's testimony or other evidence, the hearing officer is requiring a higher standard than is required under the law to establish causation under the facts of this case. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to headaches and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

**MM/IR**

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determinations that the claimant reached MMI on August 10, 2015, and that the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

### **DISABILITY**

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determination that the claimant did not have disability from the compensable injury of (date of injury), from August 11, 2015, through December 4, 2015, and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

### **SUMMARY**

We affirm that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to costochondritis, shortness of breath, blurry vision, loss of vision, corneal opacity or corneal scarring.

We reverse the hearing officer's determination that the compensable injury of (date of injury), does not extend to headaches and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on August 10, 2015, and that the claimant's IR is zero percent, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determination that the claimant did not have disability from the compensable injury of (date of injury), from August 11, 2015, through December 4, 2015, and we remand the issue of disability to the hearing officer to make a determination consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the hearing officer should analyze the evidence in the record using the correct standard to determine whether or not the claimant met his burden of proof to establish causation for the condition of headaches.

(Dr. K) is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. K is still qualified and available to be the designated doctor. If Dr. K is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The hearing officer is to inform the designated doctor of the conditions that are part of the compensable injury of (date of injury), as stipulated to by the parties. The hearing officer is to inform the designated doctor that the compensable injury of (date of injury), does not include bronchiolitis, costochondritis, nodules in the lungs, shortness of breath, blurry vision, loss of vision, strain of muscles and tendons of the back wall of the thorax, corneal opacity or corneal scarring.

The hearing officer is to request from the designated doctor a certification of MMI and IR on the compensable injury and an alternate certification of MMI/IR on the compensable injury and the disputed extent-of-injury condition of headaches. The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine MMI and IR. The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, IR and disability for the period from August 11, 2015, through December 4, 2015, consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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K. Eugene Kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge